

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. Does the Board have the authority and jurisdiction at this juncture to review the preliminary hearing finding that claimant is temporarily and totally disabled? And, if so, is claimant entitled to receive temporary total disability benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record compiled to date, the Board finds and concludes that the July 11, 2003 preliminary hearing Order should be affirmed.

At this stage of the claim, the Board concludes that claimant's testimony is credible and persuasive in light of all the evidence presented to date. Accordingly, the Board finds that claimant injured his back and left leg on March 11, 2003, while helping a coworker load a customer's van with playground equipment. The record establishes that claimant immediately reported the incident to a supervisor. And as claimant continued to work on the days following the incident, claimant repeatedly told one or more supervisors that he was experiencing increased symptoms in his left leg and hip and that he needed to see a doctor.

The Judge's finding that claimant is temporarily and totally disabled is a preliminary hearing finding that may not be reviewed or disturbed by the Board at this juncture of the claim.

Because this is an appeal from a preliminary hearing order, the Board's jurisdiction to review preliminary hearing findings is limited. At this stage of the claim not every alleged error is subject to review. Generally, the Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and

¹ K.S.A. 2002 Supp. 44-551(b)(2)(A).

(4) do certain other defenses apply.

And the term “certain defenses” refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

The issue of whether an injured worker is temporarily and totally disabled is not one of the jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. That issue is, however, one over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

But respondent and its insurance carrier are not without relief. As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, the Board affirms the July 11, 2003 Order.

IT IS SO ORDERED.

Dated this ____ day of August 2003.

BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant
James B. Biggs, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁴ K.S.A. 44-534a.